

Information paper on
13 July 2005

**Bills Committee of the Legislative Council
Marriage (Introduction of Civil Celebrants of Marriages and
General Amendments) Bill**

**Miscellaneous issues on the Marriage (Introduction of Civil
Celebrants of Marriages and General Amendments) Bill
("the Bill") raised at the meetings on 21 June and 4 July 2005**

Background

This paper provides the following information to the Bills Committee pursuant to the Committee's request-

- (a) in respect of s.27 of the Marriage Ordinance, Cap.181 ("the Ordinance") the steps and procedures to be followed by civil celebrants in order to avoid making a marriage invalid and whether the civil celebrants will be held liable for omission/non-compliance;
- (b) whether briefing session for civil celebrants would be included in the continuing legal education courses;
- (c) whether s.22 of the Ordinance should be amended to allow a minister to celebrate a marriage at any time and at any place; and
- (d) provisions in other legislation regarding the calculation of validity period of appointment where there was a period of suspension.

Invalid marriages and liability for civil celebrants

2. Section 27 of the Ordinance does not seek to impose any duty on the Registrar of Marriages (the "Registrar"), a minister or civil

celebrant of marriages (“civil celebrant”) solemnizing a marriage to carry out an investigation into the status of the marrying parties. That said, it is envisaged that the Registrar, minister and in future the civil celebrant will take reasonable steps to, for example, check the identity documents of the marrying parties to ensure that the marriage is not celebrated under a false name and that both marrying parties are of or over the age of 16. The Registrar, minister and civil celebrant will also ensure that a certificate of the Registrar has been issued before solemnizing a marriage.

3. Whether a civil celebrant will be liable in civil law (e.g. tort or contract) or criminal law for any omission will depend on the facts of an individual case. In addition, a civil celebrant shall also comply with the Code of Practice in providing his services. In the event that a civil celebrant does not comply with the Code of Practice, the Registrar may suspend or cancel his appointment. According to the Legal Practitioners Ordinance(Cap.159), all practising solicitors have to comply with the indemnity rules made by the Law Society. It is our understanding that the Law Society intends to extend the indemnity rules to cover the practice of a solicitor as a civil celebrant.

Briefing sessions for civil celebrants

4. Our understanding is that, if required, the Law Society may consider including briefing sessions for civil celebrants in the Continuing Professional Development course. We will consider how best to co-operate with the Law Society taking into account the fact that relevant up-to-date information or materials relating to the practice of a civil celebrant will be made available in the website of the Immigration Department and the Department will set up a designated hotline to handle enquiries from civil celebrants.

Ministers to celebrate marriages outside licensed places of worship

5. The main objective of appointing civil celebrants is to meet the increasing public demand for more flexible and convenient marriage solemnization services. To meet this end, solicitors and notaries public who meet specified criteria (i.e. those set out in the proposed Schedule 4 in Clause 24 of the Bill) will provide an adequate pool of candidates for

appointment at the initial stage. Their legal knowledge and familiarity with the administration of oaths and taking of declarations will enable them to perform competently the duties of a civil celebrant including acceptance and transmission of marriage notices and taking of affidavits and declarations.

6. Although a competent minister may celebrate a marriage at a licensed place of worship with which he is associated¹, he may not necessarily possess the requisite professional training and support to accept and transmit marriage notices and verify the relevant documents. In view of the above, we do not intend to extend the scheme to ministers at the initial stage. However, we will review the arrangement in a year's time after implementation.

Provisions in other legislation regarding suspension

7. The proposed section 5E in Clause 4 of the Bill empowers the Registrar to suspend the appointment of a civil celebrant if he contravenes the Code of Practice. An appointment suspended shall be not regarded as a valid appointment and no fee paid in respect of the appointment or renewal of the appointment shall be refunded.

8. We have surveyed some ordinances under which there are provisions providing for the arrangement for suspension of supervision orders, licences, permits or practising certificates of solicitors. For example, section 13(4) of the Post-Release Supervision of Prisoners Ordinance (Cap.475) provides that an order made under sections 12 and 13 of that Ordinance relating to the suspension of a supervision order for any period shall not affect the date of expiration of the supervision order. In the Security and Guarding Services Ordinance (Cap.460), there is an express provision (section 18(5)) which provides that a permit in respect of any type of security work that has been suspended shall be treated, in respect of the period of suspension, as if the permit had not been issued.

¹ Section 22 of the Ordinance provides that a competent minister of a licensed place of worship may celebrate a marriage authorised by a special licence at a place other than a licensed place of worship or the office of the Registrar.

9. Section 5 of the Security and Guarding Services (Fees) Regulation (Cap.460 sub.leg.A) further stipulates that if a permit ceases to be valid, no part of the fee paid under the Regulation shall be refunded. Similar provisions could also be found in section 27(8) of the Estate Agents Ordinance (Cap.511) and section 6(5A) of the Legal Practitioners Ordinance (Cap. 159). The former provides that where a licence of an estate agent or a salesperson is suspended or revoked, no fee or other sum paid in respect of the grant or renewal of the licence shall be refunded while the latter stipulates that the Law Society may suspend or cancel a solicitor's practising certificate with or without refunding the certificate fee.

Security Bureau
12 July 2005